

SENATE BILL REPORT

SB 6228

As of January 20, 2006

Title: An act relating to resolving conflicts between the statutes and governing documents of homeowners' associations.

Brief Description: Clarifying which law governs when homeowners' association provisions conflict.

Sponsors: Senator Fairley.

Brief History:

Committee Activity: Financial Institutions, Housing & Consumer Protection: 1/19/06.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

Staff: Jennifer Arnold (786-7471)

Background: The Homeowners' Association Act (Act) was created by the Legislature in 1995. It governs the formation and legal administration of an association and includes laws addressing the associations' powers, organizational structure, meeting and notice requirements, as well as financial record keeping requirements.

In addition to the Act, the governing documents (articles of incorporation, by-laws, declaration of covenants, and other related items over which the association has authority) mandate many of the association's powers. Further, the statutes applicable to the type of business entity the homeowner association has formed also apply to the association.

Therefore, between the Act, the business entity statutes, and the homeowners' association's governing documents, it is believed that clarification as to the interrelationship of the applicable laws is needed in order to provide consistency regarding the formation and legal administration of homeowners' associations.

Summary of Substitute Bill: It is clarified that the governing documents of a homeowners' association are controlling, unless: (1) it is expressly stated in the Act that the statute controls (e.g. the statutes addressing the display of the American flag and political yard signs) or (2) the governing documents are silent on the issue.

However, if the matter is not addressed in either the Act or the association's governing documents, then the business entity act under which the association was formed controls.

If there is a statutory conflict between provisions in the Act and the business entity act under which the association was formed, the Act controls.

Substitute Bill Compared to Original Bill: The bill as referred to committee was not considered.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is an issue that could be better resolved by a task force on homeowners' associations.

Testimony Against: This is an issue that could be better resolved by a task force on homeowners' associations.

Testimony Other: The hierarchy of laws is a matter that needs to be resolved; however, there are concerns regarding how this bill would address unlawful provisions contained in governing documents. An alternative to this bill may be to allow these types of conflicts to be resolved judicially by declaratory judgments.

Who Testified: PRO: John Garthwaite, homeowner; David Harrison, homeowner.

CON: Terrence Leahy, Community Associations Institute.

OTHER: Michelle Ein, Washington Homeowner Coalition; Robert Johnson.